

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

HUGO LEONEL CHALY-GARCIA,

CV 04-582-BR

Plaintiff,

OPINION AND ORDER

v.

UNITED STATES OF AMERICA; JOHN  
ASHCROFT, Attorney General of the  
United States; and TOM RIDGE, Secretary  
of Homeland Security of the United  
States,

Defendants.

STEPHEN W. MANNING  
JESSICA M. BOELL  
JENNIFER M. ROTMAN  
Immigrant Law Group  
P.O. Box 40103  
Portland, OR 97240  
(503) 241-0035

Attorneys for Plaintiff

**KAREN J. IMMERGUT**

United States Attorney

**KELLY A. ZUSMAN**

Assistant United States Attorney

1000 S.W. Third Avenue

Suite 600

Portland, OR 97204-2902

(503) 727-1009

Attorneys for Defendants

**BROWN, Judge.**

This matter comes before the Court on Plaintiff's Motion for Summary Judgment (#14) and Defendants' Motion for Summary Judgment (#18). For the following reasons, the Court **DENIES** Plaintiff's Motion and **GRANTS** Defendants' Motion.

#### **FACTUAL BACKGROUND**

The following facts are undisputed:

On December 14, 1990, Defendant United States and the United States Attorney General agreed to settle a class action in the United States District Court for the Northern District of California filed by numerous churches, organizations, and individuals on behalf of approximately 300,000 asylum applicants who alleged systematic violations of the Refugee Act of 1980 regarding the adjudication of Guatemalan and Salvadoran asylum claims. *See American Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 799-800 (N.D. Cal. 1991)(ABC).

The California district court provisionally approved the

settlement on December 19, 1990, and approved a final settlement on January 31, 1991. The ABC Settlement Agreement entitled members of the ABC class to heightened review procedures for asylum applications.

On January 31, 1991, Plaintiff Hugo Leonel Chaly-Garcia, a citizen of Guatemala, appeared in person at the Immigration and Naturalization Service (INS)<sup>1</sup> office in Portland, Oregon. He orally informed an immigration officer that he intended to take advantage of the "new asylum program for the Guatemalans." In response to his request, the INS provided him with a Form I-589 Request for Asylum. Plaintiff completed the form, but he did not indicate his intent to apply for status as an ABC claimant on the form.

From November 26, 1992, through April 7, 1997, Defendants suspended all action as to ABC claimants, including scheduling, interviewing, processing, and adjudicating asylum forms. Between April 7, 1997, and some point in May 1997, Defendants recommenced conducting interviews and adjudications of asylum applications by ABC claimants. In May 1997, Defendants again suspended all action on ABC claimants' asylum applications.

On July 14, 2003, Tom Malia, an INS Asylum Officer, conducted an interview with Plaintiff regarding Plaintiff's

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asylum application. Before the interview, Malia checked Defendants' ABC database and did not find any evidence that Plaintiff had filed an INS registration card for ABC opt-in status. Malia questioned Plaintiff at his interview, and Plaintiff confirmed he had not completed a registration card. Malia concluded Plaintiff was not eligible for treatment as an ABC claimant and, therefore, considered Plaintiff's application and conducted Plaintiff's interview under current regulations rather than under the heightened standards provided for in the ABC Settlement Agreement. On August 4, 2003, Defendants instituted removal proceedings against Plaintiff.

#### **PROCEDURAL BACKGROUND**

On April 9, 2004, Plaintiff filed a Complaint in this Court in which he alleges: (1) He properly tendered notice of his intent to opt-in to the ABC Settlement Agreement, (2) he is entitled to numerous procedural protections available to class members under ABC, and (3) he is entitled to a stay of removal proceedings.

On April 29, 2004, Plaintiff filed a Motion for a Temporary Restraining Order seeking an order from the Court temporarily restraining Defendants from conducting a final removal hearing. On April 30, 2004, the parties informed the Court that Defendants agreed to cancel Plaintiff's final removal hearing pending

resolution of this action.

On December 13, 2004, Plaintiff and Defendants filed cross-motions for summary judgment. Defendants contend Plaintiff failed to properly opt-in to the ABC Settlement Agreement, and, therefore, Plaintiff was not entitled to the heightened procedures provided for in the ABC Settlement Agreement. Plaintiff, however, contends he properly opted in, and, therefore, Defendants wrongly failed to consider his asylum application and to conduct his interview under the heightened procedures required by the ABC Settlement Agreement.

On March 25, 2005, the Court heard oral argument on the parties' cross-motions and thereafter took both Motions under advisement.

### **STANDARDS**

Fed. R. Civ. P. 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show the absence of an issue of material fact. *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9<sup>th</sup> Cir. 2002). In response to a properly supported motion for summary judgment, the nonmoving party must go beyond the pleadings and show there is a genuine issue of material fact for trial. *Id.*

An issue of fact is genuine "'if the evidence is such that a

reasonable jury could return a verdict for the nonmoving party.'" *Villiarmo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9<sup>th</sup> Cir. 2002)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The court must draw all reasonable inferences in favor of the nonmoving party. *Id.* A mere disagreement about a material issue of fact, however, does not preclude summary judgment. *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1389 (9<sup>th</sup> Cir. 1990). When the nonmoving party's claims are factually implausible, that party must come forward with more persuasive evidence than otherwise would be required. *Blue Ridge Ins. Co. v. Stanewich*, 142 F.3d 1145, 1147 (9<sup>th</sup> Cir. 1998)(citation omitted).

The substantive law governing a claim or a defense determines whether a fact is material. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9<sup>th</sup> Cir. 2000). If the resolution of a factual dispute would not affect the outcome of the claim, the court may grant summary judgment. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9<sup>th</sup> Cir. 2001).

### **DISCUSSION**

At the hearing, Plaintiff conceded the language of the ABC Settlement Agreement required Plaintiff to notify the INS in writing that he sought ABC claimant status, and, therefore, Plaintiff's oral statement to the INS that he wished to take

advantage of "the new asylum program for Guatemalans" was not sufficient notice under the ABC Settlement Agreement.

Defendant conceded Plaintiff was not required to complete a specific registration form to properly notify the INS of his intent to seek ABC claimant status. Defendant also agreed, for purposes of this case only, Plaintiff's attempt to notify the INS that he intended to opt-in to the ABC Settlement Agreement prior to July 1, 1991, as required by the Agreement, was not fatal to his attempt to opt-in.

Finally, the parties agree the language of paragraph two of the ABC Settlement Agreement is unambiguous, and, therefore, the Court need not examine extrinsic evidence to determine its meaning. The Court agrees.

#### **I. Pertinent ABC Settlement Agreement Provisions**

Paragraph 2 of the ABC Settlement Agreement provides in pertinent part:

The following class members, if they have not been convicted of an aggravated felony . . . will be afforded a de novo, unappealable asylum adjudication before an Asylum Officer, including a new interview, under the regulations in effect on October 1, 1990:

\* \* \*

b. Guatemalans who indicate to the INS in writing their intent to apply for a de novo asylum adjudication before an Asylum Officer, or otherwise to receive the benefits of this agreement, within the period of time commencing July 1, 1991 and ending on December 31, 1991.

ABC, 760 F. Supp. at 799-800. Plaintiff has not been convicted of an aggravated felony.

The ABC Settlement Agreement also requires various forms of notice to class members regarding the necessity to opt-in to the ABC class. For example, the ABC Settlement Agreement requires notice by publication for class members entitled to benefits under the Agreement who were not "specifically entitled to personal notice either by personal service or by first-class mail." *Id.* at 800. The parties agree Plaintiff was not entitled to personal notice.

The ABC Settlement Agreement also requires the following notice to be posted in INS offices:

Because of a lawsuit, American Baptist Churches v. Thornburgh, you can receive a new asylum interview and decision.

THIS APPLICATION IS NOT AN "AMNESTY" APPLICATION AND THERE MAY BE RISKS IN APPLYING. IF YOU BELIEVE YOU QUALIFY AND WISH ADVICE, CONTACT YOUR LAWYER OR CALL 1-800-XXX-XXXX FOR FREE ADVICE.

WHO CAN APPLY:

Almost any Guatemalan who:

- has been in the United States as of October 1, 1990
- and
- has a fear of persecution if returned to Guatemala

TIME TO APPLY:

- Speak to a lawyer before you apply if you wish legal advice.

- You must apply BEFORE December 31, 1991.

**IF YOU DO NOT APPLY BEFORE DECEMBER 31, 1991, YOU WILL NOT RECEIVE A NEW ASYLUM INTERVIEW.**



--If you have not submitted an asylum application, you must do so BEFORE March 31, 1992.

*Id.* at 821 (emphasis in original).

The ABC Settlement Agreement also requires the following notices to be placed in newspapers:

**TO: All Guatemalans who have been in the United States as of October 1, 1990:**

THIS AD HAS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS. READ IT CAREFULLY.

Because of a lawsuit, American Baptist Churches v. Thornburgh, you can receive a new asylum interview and decision.

THIS APPLICATION IS NOT AN "AMNESTY" APPLICATION AND THERE MAY BE RISKS IN APPLYING. IF YOU BELIEVE YOU QUALIFY AND YOU WISH ADVICE, CONTACT YOUR LAWYER OR CALL 1-800-XXX-XXXX for FREE ADVICE.

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--Speak to a lawyer BEFORE you apply if you wish legal advice.  
--Go to a local voluntary agency for information or to INS to obtain the necessary forms.  
--Return the forms to INS before December 31, 1991.

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--If you do not apply before December 31, 1991, you will not receive a new asylum interview.

*Id.* at 829 (emphasis in original).

The ABC Settlement Agreement also provides information regarding the time for filing asylum applications by class members entitled to only public notice: "[T]he opportunity to seek a *de novo* asylum adjudication shall remain open until December 31, 1991. Guatemalans who timely indicate their intent may submit any new application for asylum for consideration by an Asylum Officer by no later than March 31, 1992." *Id.* at 802.

Finally, the ABC Settlement Agreement addresses potential class members' failure to comply with filing requirements: "Failure to . . . timely file the asylum application if no application is already on file will render class members ineligible for any relief set forth in this settlement agreement." *Id.*

## **II. Interpretation of the Pertinent ABC Settlement Agreement Provisions**

### **A. Contract Interpretation Rules**

"An agreement to settle a legal dispute is a contract and its enforceability is governed by familiar principles of contract law." *Jeff D. v. Andrus*, 889 F.2d 753, 759 (9<sup>th</sup> Cir. 1990). *See also United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9<sup>th</sup> Cir. 1992) ("A settlement contract is treated as any other contract for purposes of interpretation."). If the United States is a party to a settlement agreement, federal law controls. *Westlands Water*

*Dist. v. United States*, 337 F.3d 1092, 1100 (9<sup>th</sup> Cir. 2003).

When interpreting the provisions of a contract, the court must first look to the text of the contract to determine whether the language is ambiguous. *O'Neill v. United States*, 50 F.3d 677, 682 (9<sup>th</sup> Cir. 1995). The terms of a contract should "be given their ordinary meaning," and "the plain language of the contract should be considered first." *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9<sup>th</sup> Cir. 2000).

"The language of a contract is ambiguous if a section of that contract is subject to reasonable alternative interpretations." *Funeral Fin. Sys. v. United States*, 243 F.3d 1015, 1018 (7<sup>th</sup> Cir. 2000). Finally, "under federal common law a contract should be interpreted as to give meaning to all of its terms - presuming that every provision was intended to accomplish some purpose, and that none are deemed superfluous." *Harris v. The Epoch Group, L.C.*, 357 F.3d 822, 825 (8<sup>th</sup> Cir. 2004) (citations omitted).

Whether contract language is ambiguous is a question of law for the court. *Petro-Ventures, Inc. v. Takessian*, 967 F.2d 1337, 1340 (9<sup>th</sup> Cir. 1992). If the court finds contract language is unambiguous, the court may not examine contradictory extrinsic evidence. Extrinsic evidence may be used only to explain or to supplement the contract. *Westlands Water Dist.*, 337 F.3d at

1101.

**B. Application of Contract Interpretation Rules to the ABC Settlement Agreement**

The parties contend the language of the ABC Settlement Agreement is unambiguous, and, therefore, the Court may not examine extrinsic evidence.

The Court agrees with the parties that the phrase "Guatemalans who indicate to the INS in writing their intent to apply for a de novo asylum adjudication before an Asylum Officer, or otherwise to receive the benefits of this agreement" plainly means "Guatemalans who intend to opt-in to the ABC Settlement Agreement must inform the INS in writing of their intent."

Here Plaintiff contends his application for asylum was sufficient to provide the INS with notice of his intent to opt-in to the ABC settlement. As Defendants note, however, Plaintiff did not state on his application that he intended to opt-in to the ABC settlement or that he wished to take advantage of the "new asylum program for the Guatemalans." In other words, there was not any way for an INS official reading Plaintiff's application to know that Plaintiff intended to opt-in to the ABC settlement.

Plaintiff contends the fact that he filed an application for asylum after the ABC Settlement Agreement was publicized and before December 31, 1991, was sufficient notice to the INS that he intended to opt-in to the ABC settlement.

Plaintiff's interpretation of the sufficiency of notice, however, would mean any Guatemalan who filed an application for asylum between the time the ABC Settlement Agreement was publicized and December 31, 1991, would be included in the ABC class regardless whether he intended to be included. The Court must "interpret[] [the ABC Settlement Agreement so] as to give meaning to all of its terms - presuming that every provision was intended to accomplish some purpose, and that none are deemed superfluous." *Harris*, 357 F.3d at 825. The Court finds any interpretation of the ABC Settlement Agreement that ignores the requirement of notice of intent would be erroneous.

In addition, the parties to the ABC Settlement Agreement specifically structured the Agreement to require Guatemalans to opt-in if they wished to receive the benefits of the Agreement. If this Court were to find that any application filed by a Guatemalan before December 31, 1991, was sufficient to provide notice to the INS of an intent to opt-in to the ABC settlement, the Court improperly would be converting the opt-in configuration of the ABC Settlement Agreement to an opt-out paradigm.

The Court, therefore, concludes Plaintiff's asylum application, which did not include any written statement indicating his desire to opt-in to the ABC settlement, does not satisfy the notice-of-intent requirement of the ABC Settlement Agreement. Because Plaintiff concedes he did not provide any

other written notice to the INS of his intent to opt-in to the ABC Settlement, the Court also concludes Plaintiff did not opt-in to the ABC settlement.

Accordingly, the Court grants Defendants' Motion for Summary Judgment on the ground that Plaintiff was not a member of the ABC class and, therefore, he was not entitled to the review and processing of his asylum application under the heightened standards of the ABC Settlement Agreement.

#### **CONCLUSION**

For these reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment (#18) and **DENIES** Plaintiff's Motion for Summary Judgment(#14).

IT IS SO ORDERED.

DATED this 17<sup>th</sup> day of June, 2005.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge

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### **DISCUSSION**

At the hearing, Plaintiff conceded the language of the ABC Settlement Agreement required Plaintiff to notify the INS in writing that he sought ABC claimant status, and, therefore, Plaintiff's oral statement to the INS that he wished to take

advantage of "the new asylum program for Guatemalans" was not sufficient notice under the ABC Settlement Agreement.

Defendant conceded Plaintiff was not required to complete a specific registration form to properly notify the INS of his intent to seek ABC claimant status. Defendant also agreed, for purposes of this case only, Plaintiff's attempt to notify the INS that he intended to opt-in to the ABC Settlement Agreement prior to July 1, 1991, as required by the Agreement, was not fatal to his attempt to opt-in.

Finally, the parties agree the language of paragraph two of the ABC Settlement Agreement is unambiguous, and, therefore, the Court need not examine extrinsic evidence to determine its meaning. The Court agrees.

#### **I. Pertinent ABC Settlement Agreement Provisions**

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- You must apply BEFORE December 31, 1991.

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*Id.* at 821 (emphasis in original).

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The ABC Settlement Agreement also provides information regarding the time for filing asylum applications by class members entitled to only public notice: "[T]he opportunity to seek a *de novo* asylum adjudication shall remain open until December 31, 1991. Guatemalans who timely indicate their intent may submit any new application for asylum for consideration by an Asylum Officer by no later than March 31, 1992." *Id.* at 802.

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The Court, therefore, concludes Plaintiff's asylum application, which did not include any written statement indicating his desire to opt-in to the ABC settlement, does not satisfy the notice-of-intent requirement of the ABC Settlement Agreement. Because Plaintiff concedes he did not provide any

other written notice to the INS of his intent to opt-in to the ABC Settlement, the Court also concludes Plaintiff did not opt-in to the ABC settlement.

Accordingly, the Court grants Defendants' Motion for Summary Judgment on the ground that Plaintiff was not a member of the ABC class and, therefore, he was not entitled to the review and processing of his asylum application under the heightened standards of the ABC Settlement Agreement.

#### **CONCLUSION**

For these reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment (#18) and **DENIES** Plaintiff's Motion for Summary Judgment(#14).

IT IS SO ORDERED.

DATED this 17<sup>th</sup> day of June, 2005.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge

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